IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 29517 of 2007(L)

PETITIONER:

ABRAHAM ROY KALLIVAYALIL,
KALLIVAYALIL HOUSE,
ARUNAPURAM P.O., PALA-686574.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF MEDICAL EDUCATION, THIRUVANANTHAPURAM.

2. THE CONTROLLER OF EXAMINATIONS, KERALA PRIVATE MEDICAL COLLEGE ASSOCIATION, VARAMPATH BUILDING, KANNAMMOOLA, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.

3. PUSHPAGIRI INSTITUTE OF MEDICAL SCIENCE AND RESEARCH, TIRUVALLA. REPRESENTED BY ITS DIRECTOR.

4. DIVYA ANN THOMAS, VETTUKALLEL HOUSE, KONDATTU KADAVU ROAD, PALA, KOTTAYAM.

BY ADV. SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN
GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON 30/10/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 29517 OF 2007 L
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Dated this the 30th day of October, 2007

J U D G M E N T

The complaint of the petitioner is that overlooking his merit and entitlement to be admitted for MBBS course in the community quota, the 3rd respondent College has granted admission to the 4th respondent, a less meritorious candidate.

2. The facts of this case are that the petitioner appeared for the common entrance admission test conducted by the 2nd respondent for and on behalf of the Consortium, which includes the 3rd respondent. In the merit list that was published, the petitioner obtained rank No.736. Being a candidate professing faith in Roman Catholic Church, he also claims that he is eligible for admission in the community quota as well.

3. Petitioner submits that on the mid night of 26/9/07, he found in the internet, Ext.P4 notification, that there were two more vacancies in the community quota seats at the 3rd respondent college and the said notification required the

candidates below the rank of 728 to report to the Principal on 27/9/07. Since the notification was misleading in as much as it directed candidates below the rank of 728, petitioner made enquiries, when he was told that the notification was not meant for those having rank upto 728. He submits that his mother personally went to the college on 27/9/07 when she was informed that the notification was intended only for candidates having rank till 728. It is also stated that his father contacted the Principal of the 3rd respondent College on 28/9/07, when he was informed that if there was any vacancy available, that will be intimated to the candidate.

4. However, to the surprise of the petitioner, on 1/10/07, he came to know that the 3rd respondent had admitted the 4th respondent on 29/9/07 and another candidate on 30/9/07 in the community quota, overlooking the merit of the petitioner. It is submitted that the 4th respondent's rank is 768 and therefore she had no superior claim to overlook the rank of the petitioner.

5. Petitioner would submit that the 4th respondent had not appeared before the 3rd respondent on 27/9/07 as required in Ext.P4 notification. But then, she was telephonically informed on

29/9/07 and offered admission. He would submit that merit has been overlooked and capitation has crossed hands and thus a less meritorious candidate secured admission. It is on these factual averments that this writ petition has been filed praying for quashing the admission of the 4th respondent and to direct that the seats available shall be filled up on the basis of merit and also to grant admission to the petitioner.

6. When this writ petition came up for admission, standing counsel for the 3rd respondent was directed to get instructions and file a statement. Accordingly, a statement has been filed on behalf of the 3rd respondent stating that as per Ext.P4, the 2nd respondent had published an intimation in its website that there are three open merit vacancies and two Christian community vacancies which were available after the final round of allotment requiring the candidates seeking admission in the open merit quota below the rank of 296 and Christian community candidates below the rank of 728 should report to the Principal of the College at 11.30 P.M on 27th September 2007. It is stated that Ext.R3(1) is the list of 3 open merit candidates and Ext.R3(2) is the list of 11 candidates who

reported for the 2 vacancies in the community quota and 3 from Ext.R3(1) and 2 from Ext.R3(2) were admitted following merit. It is also submitted that they had kept Ext.R3(4) waiting list of the remaining candidates who had reported on 27/9/07.

7. It is also submitted that after the final allotment, there was four Dalith Christian vacancies and these vacancies reverted to the open community quota. Another vacancy of a student who had exercised higher option and left the college and yet another vacancy of a candidate who did not report also arose in the college. Thus according to the 3rd respondent, there were 6 vacancies in the Christian open community quota and that these vacancies were also filled up on 29.9.07 from among those included in Ext.R3(4) waiting list and Ext.R3(5) is the list of those 6 candidates, who were granted admission based on merit.

8. In so far as the petitioner is concerned, it is stated that though he had obtained rank no.736, he never responded to Ext.P4. It is submitted that the names of the candidates, who had reported on 27/9/07 are indicated in Ext.R3(2) and this list contains even the signature of the candidates. Therefore, according to the 3rd respondent, the allegation that the 4th

respondent did not report for admission is totally incorrect. The 3rd respondent would also submit that as per the judgment of the Apex Court in **Mridul Dhar V. Union of India (2005(1) KLT 723)**, the last date upto which the students could be admitted was 30th September 2007 and that the entire vacancies have been filled up by 29/9/07.

9. From the facts as above, it is evident that while the petitioner contents that his merit in the rank list has been overlooked, the answer of the 3rd respondent is that the petitioner ought to have reported in response to Ext.P4 on 27/9/07 and that in the absence of such reporting, the petitioner cannot complain that he has been denied admission or that his merit has been overlooked. These submissions were reiterated at the time when the case was argued by the counsel for the petitioner and the 3rd respondent.

10. On an anxious consideration of the pleadings and the submissions made by both sides, I am satisfied that the petitioner has not made out a case to entertain the writ petition or to issue notice to the other respondents. Ext.P4 vacancy notification was published in the internet, which came to the

notice of the petitioner atleast on 26/9/07 night, as claimed by him. It is admitted position that the petitioner did not report before the Principal of the 3rd respondent College on 27/9/07. If he has not in fact reported as required of the candidates, petitioner cannot complain even if anybody below him in the rank list has been granted admission. Though the petitioner claims that his mother went to the College on 27/9/07, there is absolutely no evidence in support of this contention. Similar is the case with regard to the allegation that the petitioner's father had contacted the Principal of the college.

11. Though the petitioner would argue that the 4th respondent also did not report for admission on 27/9/07, petitioner is not able to establish this argument on any acceptable evidence. On the other hand, the 3rd respondent has produced as Ext.R3(2) a list of candidates who reported at the college on 27/9/07. This list includes the 4th respondent also. Not only that the petitioner has not filed any reply affidavit or adduced any proof, to discredit the contents of Ext.R3(2). If that be so, I should take Ext.R3(2) as a dependable document and the contents thereof, which suggests the presence of the 4th

respondent in the college on 27/9/07 as averred in the statement filed on their behalf. It is true that the 4th respondent's rank is below that of the petitioner, but then if the petitioner did not report the college at the notified time and it was the 4th respondent who was present as directed in Ext.P4, petitioner cannot complain that the college committed an illegality by admitting the 4th respondent even if she is comparatively a less meritorious candidate.

12. Counsel would content that going by the law laid down by the Apex Court, even in the community quota, admission can be filled up only based on merit. I have no quarrel with this preposition. But then, if a meritorious candidate is absent at the time of selection and among the candidates present, the meritorious one, who could be less meritorious than the candidate who is absent is selected, the selection of the candidate cannot be said to be invalid for any reason. After choosing to be absent for whatever reason, the petitioner cannot contend that his ranking has been overlooked or a less meritorious candidate has been admitted. In that view of the matter, I do not think that any of the judgments cited by the

counsel for the petitioner has any relevance.

13. Since the petitioner has failed in proving his allegations, this court is left with the only option of accepting the case of the 3rd respondent supported by the documents annexed to the statement filed.

Writ petition therefore lacks merit. It is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE.

Rp